

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DECISION AND ORDER
08-CR-69S -12

JOSE MARTINEZ,

Defendant.

1. Presently before this Court is Defendant Jose Martinez's Motion for "Reconsideration of Detention Order." (Docket No. 184.)¹

2. Martinez is charged, along with ten other co-defendants, by way of Superseding Indictment, with knowingly, willfully, and unlawfully combining, conspiring, and agreeing with others, known and unknown, to commit offenses against the United States, that is, possessing with intent to distribute , and to distribute, 500 grams or more of a mixture and substance containing cocaine, and manufacturing, possessing with intent to distribute and distributing 50 grams or more of a mixture and substance containing cocaine base, in violation of Title 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 841(b)(1)(B); all in violation of Title 21 U.S.C. § 846.

3. Following the Superseding Indictment, the Government moved to detain Martinez. On July 17, 2008, the Honorable H. Kenneth Schroeder, Jr., United States Magistrate Judge, held a hearing with respect to the Government's motion.

¹ Martinez's motion also asks this Court to dismiss the Superseding Indictment based upon violations of the Speedy Trial Act and the Sixth Amendment to the United States Constitution, and also to Sever him from the other co-defendants. (Docket No. 184.) This Court will rule upon these requested bases of relief by way of separate decision and order.

4. By Order dated July 18, 2008, Judge Schroeder ordered that Martinez be detained pending trial. (Docket No. 95.) In the Order, Judge Schroeder set forth the governing factors for detention under the Bail Reform Act, 18 U.S.C. § 3142(g), and made certain factual findings, which, according to Judge Schroeder, compelled Martinez's detention. In particular, Judge Schroeder held that Martinez has a serious criminal history, which dates back to 1993, and involves charges of attempted murder, assault, harassment, conspiracy to distribute cocaine, stalking, violations of his probation, and is presently charged with felony drug charges in Pennsylvania. Judge Schroeder also noted that Martinez attempted to escape on three different occasions while in U.S. Marshals custody. Because Judge Schroeder concluded that there are no conditions or combination of conditions that could reasonably assure the safety of the community or the future appearance of the defendant, he ordered that Martinez be detained pending trial.

5. Although Martinez did not appeal Judge Schroeder's Order, by motion dated December 2, 2009, Martinez asked this Court to "reconsider" Judge Schroeder's Order of detention. (Docket No. 184.) Trial is presently scheduled for January 5, 2010.

6. In support of the motion, Martinez, through his attorney, argues a number of grounds. First, his attorney argues that "it is too costly and very cumbersome for me to visit with and consult with Jose Martinez while he remains incarcerated at the Batavia Detention Center which is approximately 35 miles from my law office." (Docket No. 184, ¶ 37.) Second, he argues that "there is not one scintilla of evidence indicating that Jose Martinez had anything to do with the charged conspiracy." (Id. ¶ 39.) Third, that he has been "totally stonewalled" by the prosecution with respect to discovery materials and plea offers. (Id. ¶ 41.)

7. Having reviewed Judge Schroeder's Order of Detention, the factors set forth under the Bail Reform Act, and Martinez's arguments in support of reconsideration, this Court finds no basis to reconsider Judge Schroeder's determination. Martinez does not challenge any of Judge Schroeder's factual findings, nor does he argue that Judge Schroeder incorrectly applied the governing factors set forth in 18 U.S.C. § 3142(g). Moreover, he does not present any changes in circumstance addressing his flight from, and danger to, the community.

8. With respect to Martinez's arguments, his purported inconvenience in communicating with his client is not a valid basis upon which to reconsider Judge Schroeder's determination. Second, his argument that there "is not one scintilla of evidence" connecting his client to the conspiracy is premature and awaits determination upon trial in this case. And lastly, his attorney's argument that he has been "totally stonewalled" is again, not relevant to whether Martinez should be detained pending trial.

9. Accordingly, Defendant Jose Martinez's Motion for Reconsideration of Judge Schroeder's Order of Detention is denied.

IT IS HEREBY ORDERED, that Defendant Jose Martinez's Motion for Reconsideration of Judge Schroeder's Order of Detention (Docket No. 184) is DENIED.

SO ORDERED.

Dated: December 17, 2009
Buffalo, NY

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge